

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6400 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI Sd/-
and
Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO
1 to 5 No

KAKOSHI VIBHAG BUFFALO SALVAG

Versus

STATE OF GUJARAT

Appearance:

MR MB FAROOQUI for MR KS NANAVATI for Petitioners
MS MANISHA LAVKUMAR for MR MG DOSHIT
for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE D.H.WAGHELA

Date of decision: 10/05/2000

ORAL JUDGEMENT (Per D.H.Waghela, J.)

1. This petition is filed by the Kakoshi Vibhag
Buffalo Salvage Commission Agents' Association on behalf

of its members to challenge the Gujarat Cattle (Import Control) Order, 1982 issued under the Bombay Essential Commodities and Cattle (Control) Act, 1958. It is contended in the petition that the Order under challenge is an attempt to circumvent the possible decision in Civil Appeal No.2126 of 1972 pending before the Hon'ble Supreme Court in which the judgment and order of this Court dated 17/18.4.1972 in Special Civil Application No.913 of 1970 is under challenge.

2. The first petitioner claims to be an association of traders engaged in the business of running the so-called salvage farms as also dealing in import and export of buffaloes. The buffaloes which would have temporarily ceased to give milk are brought from other States and kept in the farms for feeding and after a few months when they start giving milk, they are sent back to their owners. The movement of buffaloes outside the State attracted the provisions of the Gujarat Cattle (Export Control) Order, 1961 under which, inter alia, a permit was required to be obtained for the cattle to be exported and for such permit a fee of Rs.5 was prescribed. Such fee were increased to Rs.20 by a subsequent notification dated 12.3.1969. The petitioner had challenged the constitutional validity of Clauses 3 and 4 of the Gujarat Cattle (Export Control) Order, 1961 vide the aforesaid Special Civil Application No.913 of 1970; but the challenge was, at the time of hearing, confined to the amending notification by which the fee of Rs.5 per each head of cattle had been increased to Rs.20. In this context, while examining the scheme of the provisions of the said Order, it is observed by this Court that the power conferred upon the State Government under Section 4 of the Bombay Essential Commodities and Cattle (Control) Act, 1958 to provide for incidental and supplementary matters, had been used for a collateral purpose because the revenue derived from licence fee for issuing export permit was expended for purposes other than for administering the export control scheme. Therefore, it was held that the State Government had, in providing for the fees, exceeded its powers under Clause (j) of Sub-section (2) of Section 4 of the said Act.

3. It has to be noted here that in the said judgment reported in 14 (1973) GLR 10, the main issue was whether what the State Government had been charging for issuing a permit was a fee or a tax. It was noted that the licence fee was not levied under the Act but under the Control Order issued under the provisions of the Act which empowered the State Government to provide for any incidental or supplementary matter including the grant or

issue of licences, permits or other documents and charging of fees therefor. After examining the scheme of the Act in the Control Order, it was held that a control order can certainly contain incidental and supplementary provisions for making the export control effective and for reimbursing the costs of administering the export control scheme. Any fees which were levied and collected under the Control Order, therefore, must be for the purpose provided for by it. It could not provide for levy and collection of a fee which is unconnected with and unrelated to the regulation of cattle export with which alone the Control Order dealt. Relying upon the judgment of the Hon'ble Supreme Court in INDIA MICA AND MICANITE INDUSTRIES LTD. v. THE STATE OF BIHAR AND OTHERS (AIR 1971 SC 1182), it was observed that the correlation between the services rendered and the fee levied is essentially a question of fact. On these premises, it was held by this Court in the aforesaid judgment that the cattle exporters must pay for administering the scheme of the Cattle Export Control, which was the only purpose and the object of the Control Order. They cannot be made to pay for administering all sorts of schemes and programmes undertaken by the State Government for the improvement, increase and maintenance of cattle wealth in Gujarat.

4. It is mainly on the analogy of the above-mentioned judgment that the petitioner has challenged in this petition the Gujarat Cattle (Import Control) Order, 1982, particularly the provisions to charge a fee of Rs.20 per cattle head permitted to be imported under the said Order. It is pointed out that the appeal preferred from the aforesaid judgment of this court (14 (1973) GLR 10) being Civil Appeal No.2126 of 1972 is dismissed by the Hon'ble Supreme Court on 16.7.1987. Before considering the challenge to the impugned Order in the present petition in light of the said backdrop, a very important difference between the facts in the earlier case and the present one has to be noted. In the aforesaid earlier case of the petitioner challenging the provisions of the Export Control Order, it was stated by the State Government in its affidavit-in-reply that the income derived from the fee collected by it under Sub-clause (3) of Clause 4 of that Order was applied to several purposes, viz. (1) supply of fodder to cattle in need of it; (2) establishment and maintenance of artificial insemination centres to increase cattle wealth; (3) establishment and maintenance of cattle breeding centres to improve the livestock; (4) implementation of intensive cattle development programme; (5) increase in productivity of cattle in Gujarat; (6)

implementation of cattle feeding scheme; (7) introduction of cattle disease control; (8) introduction of rural dairy extension programme; and (9) implementation of cattle marketing programme. As against that, the State Government has, in the present petition, refrained from filing any affidavit-in-reply as also from making any such claims about the use of the income derived from the fees collected under the impugned Order. Nor has the petitioner specifically averred that the fee levied and collected under the impugned Order was for any purpose unconnected with or unrelated to the scheme under the impugned Order. It is also not contended on behalf of the petitioner that the levy of fee was otherwise illegal, unreasonable or irrational.

5. Thus, detached from the background and analogy of the earlier case of the petitioner, it has to be examined whether a case is made out against the validity of the impugned Order. The Bombay Essential Commodities and Cattle (Control) Act, 1958, so far as it relates to cattle, has been enacted to provide for, as declared in the preamble, maintenance, licensing and movement of cattle. Sub-section (1) (b) of Section 4 of the Act confers upon the State Government the powers to make an order for regulating the movement, supply and distribution of, or trade and commerce in, or for regulating the maintenance of, cattle. Clause (f) of sub-section (2) empowers the State Government to make an order for regulating by licence, permit or otherwise the movement, transport, distribution, disposal, acquisition, use and keeping of cattle. Clause (j) of Sub-section (2) of Section 4 confers upon the State Government the power to make an order to provide for any incidental and supplementary matters including the grant or issue of licence, permit, or other documents and the charging of fees therefor. In exercise of the said powers, the Gujarat Cattle (Import Control) Order, 1982, impugned herein, is made on the basis of the opinion that it was necessary and expedient so to do for maintaining the supply of cattle in the State. Clause 3 of the said Order imposes restriction on import of cattle and for the purpose provides for requirement of a permit to be issued by the Collector of the district for importing cattle by any person. It also provides for charging of a fee of Rs.20 per each cattle head for the issue of an import permit. Clause 4 provides for appeal from an order of the Collector refusing to issue a permit. Clause 5 provides for the power to prevent unauthorised entry of cattle into the State without an import permit. Clause 6 provides for the powers of entry, search and seizure etc. Under the scheme of the Order, the Collector of the

district in which the cattle is to be imported is required to consider the availability of fodder and water in the district for the time being existing therein. Thus, it can be seen that the impugned Order is made and required to be administered for maintaining the supply of cattle with the primary objective of control, regulation and movement of cattle for their proper maintenance. The levy of fees for the grant or issue of licences, permits or other documents for any matter incidental or supplementary to the regulation, maintenance, movement or trade and commerce in cattle, is expressly authorised by Section 4 of the Act. As stated earlier, this Court has taken the view in the petitioner's own earlier case that fees can be levied for the purpose of the object of the Control Order. Looking to the scheme under the impugned Control Order, it is obvious that for the purpose of administering the scheme, the Collector of the district is required to consider the availability of fodder and water in the district and the State Government is required to discharge certain functions which are incidental and supplementary matters and the charging of fees for the grant or issue of import permit is fully covered and authorised by the provisions of the parent Act. It is neither alleged or established by the petitioner nor can it be presumed that there is no co-relationship between the services rendered and the fees levied.

6. It may be interesting to note here that the same petitioner had also challenged the constitutional validity of Clause 3 (2) and clause 4 of the Gujarat Milch and Draught Cattle (Control and Movement) Order, 1983. The judgment in the said case reported in 1984 (1) GLR 659 refers to the provisions of the Export Control as well as Import Control Orders and also notes the amendment in Sub-clause (3) of Clause 4 of the Export Control Order, which reads as under:

"Provided that where a permit is to be issued to a person for export of such head of cattle as is earlier imported under an import permit issued to him under Clause 3 of the Gujarat Cattle (Import Control) Order, 1982 for the purpose of salvage, no fees shall be payable by such person in respect of such permit."

This also takes care of the grievance of the petitioner that the traders were required to pay the fees in respect of the same cattle while importing them for a temporary period as also while exporting them back. The following pertinent observations made in the said judgment in

relation to the Export Control Order also pari materia apply in relation to the Import Control Order:

"It can safely be said that of necessity the public interest permeating the impugned provisions must eclipse the interests of the private exporters. We find that the impugned order is meant to serve as a complementary measure to the scheme of export control envisaged by the Control Order of 1961, and is meant to make the said scheme of export control wholesome, more effective and foolproof. Such a safety measure is not shown to be in any way obnoxious or excessive in nature and character so as to take it out of the protective provisions of Article 19 (6) of the Constitution of India. Under these circumstances, the restrictions imposed by the impugned provisions have to be held to be quite reasonable"

6. In the result, we find no merit in the challenge to the impugned Order and hence, the petition is rejected. Rule is discharged with no order as to costs.

(KMG Thilake)

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